

REMARKS/ARGUMENTS

Claims 1-70 are pending. Claims 58-66 are withdrawn. Claim 68 is cancelled by this amendment.

Claim Rejections Based on Prior Art Including Constantino

Claims 1-7, 13-22, 26, 29-35 and 46-50 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Publication No. 2003/0224327 (Constantino).

Claims 8, 9 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 5,782,918 (Klardie).

Claims 10 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 5,782,918 (Klardie et al). as applied to claims 9 and 27 above, and further in view of U.S. Patent No. 6,227,859 (Sutter).

Claims 12, 67 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 6,663,389 (Gallicchio).

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 5,823,776 (Duerr et al).

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 6,012,923 (Bassett et al).

Claims 36 and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Publication No. 2002/0127515 (Gittleman).

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Publication No. 2002/0127575 (Gittleman) as applied to claim 36 above, and further, in view of U.S. Patent No. 6,315,563 (Sager).

Claims 51-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 6,280,195 (Broberg et al).

Claim 57 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 6,280,195 (Broberg et al.) as applied to claim 55 above, and further, in view of U.S. Patent No. 6,217,332 (Kumar).

Claim 69 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 6,663,389 (Gallicchio) as applied to claim 67 above, and further, in view of U.S. Patent No. 6,217,332 (Kumar).

Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication No. 2003/0224327 (Constantino) in view of U.S. Patent No. 6,663,389 (Gallicchio) as applied to claim 67 above, and further, in view of U.S. Patent No. 5,685,715 (Beaty et al.)

All of the above rejections rely in whole or in part on U.S. Patent Pub. No. 2003/0224327 to Constantino. A declaration is submitted herewith under 37 C.F.R. § 1.131. The declaration establishes that the subject matter of the pending application was invented prior to the priority date of Constantino.

Constantino was filed on June 3, 2002. The inventors state that Exhibits A, B, C, and D show CAD drawings of the claimed subject matter of the present application that were developed prior to June 3, 2002. (Decl. ¶¶ 4-7). Further, the inventors state that physical prototypes of the designs shown in Exhibits A-D were created prior to June 3, 2002. (Decl. ¶ 8). The inventors also state that testing was requested on the physical prototypes created prior to June 3, 2002. (Decl. ¶ 9).

In addition, the inventors state that they diligently worked on this technology and on developing the provisional applications on which the present application claims priority. (Decl. ¶¶ 10). Hence, it is clear that the subject matter disclosed and claimed in the present application was invented before June 3, 2002, the filing date of Constantino. Therefore, the Applicants respectfully request that the 35 U.S.C. § 102(e) rejections and the 35 U.S.C. § 103(a) rejections based on Constantino be withdrawn.

Amended Claim 67 Allowable

Claims 67, 69 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,810,590 to Fried et al. (“Fried”) in view of U.S. Patent No. 5,755,574 to D’Alise (“D’Alise”).

Claim 67 has been amended to recite “an implant comprising a bore, a first anti-rotational feature comprising a first anti-rotational cavity in the bore, and a second anti-rotational feature comprising a second anti-rotational cavity in the bore distinct from the first anti-rotational cavity.” The additional elements of amended claim 67 were previously found in claim 68. Claim 68 was not rejected based on Fried in view of D’Alise, as the Examiner recognized that not all of the elements recited in previous claim 68 were disclosed or suggested by those references. While the Applicants do not agree with the Examiners previous rejection of claim 67, claim 67 has been amended to speed the case to allowance by placing claim 67 in a clearly allowable state.

Claims 69 and 70 depend directly from claim 67, thus claims 69 and 70 are clearly allowable over Fried in view of D'Alise.

Double Patenting

Claims 1-57 and 67-70 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 11-35 of copending Application No. 10/713,328.

To overcome this rejection, a Terminal Disclaimer is submitted herewith.

Conclusion

It is the Applicant's belief that all of the claims are in condition for allowance and action towards that effect is respectfully requested.

If there are any matters which may be resolved or clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at the number indicated.

Respectfully submitted,

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